



## Office of the Attorney General

State of Texas

September 23, 1992

DAN MORALES

ATTORNEY GENERAL

David R. Smith, M.D.  
Commissioner of Health  
Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78756-3199

OR92-571

Dear Dr. Smith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17180.

The Texas Department of Health (the "department") has received a request for information relating to employee terminations and grievances. Specifically, the requestor seeks:

1. List of all employee terminations and/or resignations and the reasons given therefor for the last two years. (Austin Health Department only)
2. List of all employees who filed grievances with the Health Department in the last two years.
3. For each of the above items, please identify the employee by name, age, sex, and race.

You claim that the requested information is excepted from required public disclosure by sections 3(a)(1), 3(a)(2), 3(a)(3), and 3(a)(11).

Section 3(a)(3) excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the

attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). The pendency of a complaint before the Equal Employment Opportunity Commission (EEOC) indicates a substantial likelihood of litigation and is therefore sufficient to satisfy section 3(a)(3). Open Records Decision No. 386 (1983).

You advise us that the requestor has filed an action with the EEOC alleging employment discrimination. The attorney representing the department claims that the requested information relates to the pending action. We have examined the documents submitted to us for review and agree that they relate to the pending action. Accordingly, unless already released to the requestor through disclosure, court order, or other means, the requested information may be withheld from required public disclosure under section 3(a)(3) of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-571.

Yours very truly,



Celeste A. Baker  
Assistant Attorney General  
Opinion Committee

CAB/GCK/lmm

Ref.: ID# 17180

cc: Ms. Susan G. Morrison  
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